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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Lane W. Lee; Timothy R. Feldman; Douglas M. Rayburn; Gary G. Kiwimagi  
Assignee: DPFI Acquisitions, Inc.  
Title: Unlocking Method And System For Data On Media  
Serial No.: 09/940,035 Filing Date: August 27, 2001  
Examiner: Unknown Group Art Unit: 2131  
Docket No.: M-12040 US

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December 3, 2003

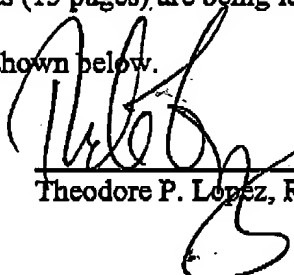
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Commissioner for Patents  
Alexandria, VA 22313-1450

DEC 03 2003

**OFFICIAL****CERTIFICATION OF FACSIMILE TRANSMISSION**

I hereby certify that the following executed Power of Attorney by Assignee of Entire Interest (2 pages) including Assignment documents (15 pages) are being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Dated: December 3, 2003

  
Theodore P. Lopez, Reg. No. 44,881

Total No. of Pages: 18

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Fax to USPTO

-1-

Serial No. 09/940,035

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Applicant(s):** Lane W. Lee; Timothy R. Feldman; Douglas M. Rayburn; Gary G. Kiwimagi  
**Assignee:** DPHI Acquisitions. Inc.  
**Title:** Unlocking Method And System For Data On Media  
**Serial No.:** 09/940,035 **Filing Date:** August 27, 2001  
**Examiner:** Unknown **Group Art Unit:** 2131  
**Docket No.:** M-12040 US

COMMISSIONER FOR PATENTS  
Alexandria, VA 22313-1450

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST**

Sir:

The above-identified assignee, hereby revokes all powers of attorney previously given and appoints the attorney(s) and/or agent(s) identified below to prosecute the above-identified application and to transact all business in the United States Patent and Trademark Office in connection therewith:

**Customer No. 32605**

Please address all correspondence and telephone calls regarding this application to:

Theodore P. Lopez  
MacPherson Kwok Chen & Heid LLP  
1762 Technology Drive, Suite 226  
San Jose, CA 95110  
Phone: (949) 752-7040  
Fax: (408) 392-9262

**ASSIGNEE CERTIFICATION UNDER 37 CFR 3.73(B)**

The undersigned representative of the above-identified assignee certifies that the above-identified assignee is the assignee of the entire right, title and interest in the above-identified

patent application/patent by virtue of a chain of title from the inventor(s) of the above-identified patent application/patent to the above-identified assignee as shown below:

1. From: Timothy R. Feldman To: DataPlay, Inc.
2. From: Lane W. Lee To: DataPlay, Inc.
3. From: Douglas M. Rayburn To: DataPlay, Inc.
4. From: Gary G. Kiwimagi To: DataPlay, Inc.

The document was recorded in the United States Patent and Trademark Office at Reel 012129 Frame 0256. A copy of the document is attached.

4. From: DataPlay, Inc. To: Silicon Valley Bank

A copy of the assignment document being attached hereto.

5. From: Silicon Valley Bank To: DPHI Acquisitions, Inc.

A copy of the assignment document being attached hereto.

The undersigned (whose title is supplied below) is empowered to sign this certificate on behalf of the above-identified assignee.

Date: 11/19/03

DPHI Acquisitions, Inc.

By: [Signature]

(Signature)

Name: DAVID H. DAVIES  
Title: CTO

DEC. 3. 2003 4:06PM

MACPHERSON KWOK CHEN

NO. 512 - IP. 440 us



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
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NOVEMBER 05, 2001

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SKJERVEN MORRILL MACPHERSON LLP  
MARGARET M. KELTON  
25 METRO DRIVE  
SUITE 700  
SAN JOSE, CA 95110

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SKJERVEN, MORRILL, MACPHERSON,  
LLP

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 08/27/2001

REEL/FRAME: 012129/0256  
NUMBER OF PAGES: 4

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:  
FELDMAN, TIMOTHY R.

DOC DATE: 08/24/2001

ASSIGNOR:  
LEE, LANE W.

DOC DATE: 08/23/2001

ASSIGNOR:  
RAYBURN, DOUGLAS M.

DOC DATE: 08/23/2001

ASSIGNOR:  
KIWIMAGI, GARY G.

DOC DATE: 08/23/2001

ASSIGNEE:  
DATAPLAY, INC.  
2560 54TH STREET  
BOULDER, COLORADO 80301

SERIAL NUMBER: 09940035  
PATENT NUMBER:

FILING DATE: 08/27/2001  
ISSUE DATE:

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ART. 1

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## ASSIGNMENT

This Assignment ("Assignment") is effective as of the date of execution hereof by SILICON VALLEY BANK ("SVB") having a place of business at 3003 Tasman Drive, Santa Clara, California 95054, GATX VENTURES, INC ("GATX") having a place of business at 3687 Mt. Diablo Boulevard, Suite 200, Lafayette, California 94549, and SEQUEL ENTREPRENEURS' FUND II, L.P., in its capacity as Collateral Agent ("Sequel") having a place of business at 4430 Arapahoe Avenue, Suite 220, Boulder, Colorado 80303 (SVB, GATX and Sequel hereinafter collectively referred to as "Assignors"). The rights assigned herein will be owned by DPHI Acquisitions, Inc., a Delaware corporation, (hereinafter "Assignee"), with its principal place of business located at 2580 55<sup>th</sup> Street, Boulder, Colorado 80301.

WHEREAS, Assignors have acquired all rights, title and interest to technologies ("Technology") including, but not limited to, all versions of any software, firmware, hardware, chip layout and design, manufacturing processes, methods and system (including, without limitation, computer applications), ideas, inventions, disclosures, original works of authorship, developments, improvements, modifications, or enhancements, created, acquired and/or developed by or on behalf of DataPlay, Inc., including, without limitation, all object code and source code; all designs, drawings, specifications, models, data, algorithms, documentation, diagrams, flow charts and development plans, know-how and techniques, trade secrets and materials; all derivative works of the foregoing by whomever created (in object code, source code, or any other form and/or any media); and all tangible embodiments of the foregoing (in whatever form or media); and

WHEREAS, Assignors hereby desire to irrevocably assign to Assignee all rights, title and interest in and to the Technology.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignors make the following assignment:

1. Assignors hereby irrevocably assign to Assignee all of Assignors' rights, title and interest in and to the Technology, said rights, title and interest including, but not limited to, all patent rights, copyrights, trademark rights, mask rights, trade secret rights and all other intellectual and industrial property rights anywhere in the world thereto, to have and to hold the same unto Assignee, its successors and assigns. In addition, Assignors hereby assign to Assignee and waives any and all moral rights Assignors may have in and to the Technology or any portion thereof.
2. Assignors irrevocably assign to Assignee all of Assignors' rights, title and interest in and to all patent applications and issued patents so derived from the Technology, together with any reissue, continuation, division, continuation-in-part or extension thereof, filed in the United States, as listed in Attachment A, and Internationally, as listed in Attachment B. In addition, Assignors irrevocably assign to Assignee all of Assignors' rights, title and interest in all invention disclosures as listed in Attachment C.
3. At any time, and from time to time after the date of execution of this Assignment, Assignors shall forthwith, upon Assignee's request, take any and all steps to

{W0734733 JLC}

execute, acknowledge and deliver to Assignee any and all further instruments and assurances necessary or expedient in order to vest the aforesaid rights and causes of action more effectively in Assignee and to facilitate Assignee's enjoyment and enforcement of said rights and causes of action.

4. Assignors hereby constitute and appoint Assignee as Assignors' true and lawful attorney-in-fact, with full power of substitution in Assignors' name and stead, to take any and all steps, including proceedings at law, in equity or otherwise, to execute, acknowledge and deliver any and all instruments and assurances necessary or expedient in order to vest or perfect the aforesaid rights and causes of action more effectively in Assignee or to protect the same or to enforce any claim or right of any kind with respect thereto. This includes, but is not limited to, any rights with respect to the Technology that may accrue or have accrued in Assignors' favor from the respective date of creation of the Technology to the date of this Assignment. Assignors hereby declare that the foregoing power is coupled with an interest and is irrevocable.

5. To the extent, if any, that Assignors retain any right, title or interest with respect to the Technology or rights in any technology or materials that would be infringed by Assignee's use, sale, offer for sale, modification, making, maintenance, support, reproduction or distribution of any of the Technology, Assignors hereby grant to Assignee an exclusive, irrevocable, perpetual, fully paid-up, royalty-free, transferable, sublicensable, worldwide right and license to exploit and exercise all such technology and materials (i) to use, sell, offer to sell, modify, make, maintain, support, reproduce and distribute all or any portion of the Technology including, without limitation, the making of additions to or deletions from the Technology, regardless of the medium (now or hereafter known) into which the Technology may be modified.

6. No waiver of any breach or condition of this Assignment shall be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature. If any provision of this Assignment is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Assignment shall otherwise remain in full force and effect and enforceable. This Assignment shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be wholly performed within California, without regard to conflicts of laws provisions thereof.

WITHOUT LIMITING IN ANY WAY THE PROVISIONS OF THE ASSET PURCHASE AGREEMENT DATED FEBRUARY 19, 2003, BETWEEN ASSIGNORS AND ASSIGNEE, INCLUDING THE ASSIGNORS' REPRESENTATIONS AND WARRANTIES SET FORTH THEREIN, ALL OF WHICH APPLY TO THIS ASSIGNMENT AND ALL OF WHICH TERMS OF THE ASSET PURCHASE AGREEMENT ARE APPLICABLE TO THIS ASSIGNMENT AND THE CONVEYANCE EFFECTUATED PURSUANT HERETO, ASSIGNORS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO: THE TITLE TO THE TECHNOLOGY; THE CONDITION, DESIGN, OR QUALITY OF THE TECHNOLOGY; THE FITNESS OF THE TECHNOLOGY FOR USE OR FOR A PARTICULAR PURPOSE; THE MERCHANTABILITY OF THE TECHNOLOGY; COMPLIANCE OF THE

TECHNOLOGY WITH THE REQUIREMENTS OF ANY LAWS, RULES, SPECIFICATIONS OR CONTRACTS PERTAINING THERETO; PATENT INFRINGEMENT; LATENT DEFECTS; THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE TECHNOLOGY OR THE CONFORMITY OF THE TECHNOLOGY TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO; THE OPERATION, USE, OR PERFORMANCE OF THE TECHNOLOGY; OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE TECHNOLOGY. ASSIGNEE ALSO ACKNOWLEDGES THAT ASSIGNORS HAVE MADE NO REPRESENTATION OR WARRANTY OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED, WITH RESPECT TO THE OPERATION, USE OR PERFORMANCE OF THE TECHNOLOGY.

ASSIGNORS SHALL HAVE NO LIABILITY TO ASSIGNEE OR ANY PERSON WHOMSOEVER (INCLUDING LICENSEES OR PURCHASERS OF ALL OR ANY OF THE TECHNOLOGY) FOR ANY CLAIM, LOSS, DAMAGE OR EXPENSE (INCLUDING ATTORNEY FEES) OF ANY KIND OR NATURE, WHETHER SPECIAL, CONSEQUENTIAL, ECONOMIC OR OTHERWISE, CAUSED OR ALLEGED TO BE CAUSED DIRECTLY, INDIRECTLY, INCIDENTALLY, OR CONSEQUENTIALLY BY THE TECHNOLOGY OR ANY PART THEREOF OR PRODUCTS THEREFROM, BY ANY INADEQUACY OF THE TECHNOLOGY OR DEFECT OR DEFICIENCY THEREIN, BY ANY INCIDENT WHATSOEVER ARISING IN STRICT LIABILITY OR OTHERWISE FROM ASSIGNORS' OR ASSIGNEE'S NEGLIGENCE OR OTHERWISE, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED, OR ARISING OUT THE TECHNOLOGY.

Assignee acknowledges that Assignors have made no representation or warranty concerning the location of the Technology nor whether all of the Technology is in existence or operational. ASSIGNEE PURCHASES THE TECHNOLOGY AS IS AND WHERESOEVER LOCATED, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. Assignee accepts the Technology subject to the terms of this Assignment.

Assignee agrees to be responsible for all taxes, that are now existing or hereafter are incurred, assessed, or imposed on the Technology or as a result of the ownership or sale of the Technology, except as expressly provided otherwise in the Asset Purchase Agreement. Assignee hereby agrees to hold Assignors harmless from and against any and all taxes, that are now existing or are hereafter incurred, assessed or imposed on the Technology or as a result of the ownership of the Technology.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Assignors have caused this Assignment to be signed in Assignors' name.

SILICON VALLEY BANK

Date: 3-4-2003

*Marla Johnson*  
Signature of Assignor

Marla Johnson, Senior Vice President  
Printed Name and Title

GATX VENTURES, INC.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

SEQUEL ENTREPRENEURS' FUND II, L.P.  
as Collateral Agent

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title



IN WITNESS WHEREOF, Assignors have caused this Assignment to be signed in Assignors' name.

SILICON VALLEY BANK


Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

GATX VENTURES, INC.

Date: 3-4-2003

  
\_\_\_\_\_  
Signature of Assignor

CARL F. SWANSON, VP  
\_\_\_\_\_  
Printed Name and Title

SEQUEL ENTREPRENEURS' FUND II, L.P.  
as Collateral Agent

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

IN WITNESS WHEREOF, Assignors have caused this Assignment to be signed in Assignors' name.

SILICON VALLEY BANK

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

GATX VENTURES, INC.

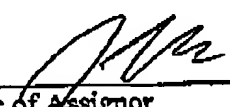
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Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

SEQUEL ENTREPRENEURS' FUND II, L.P.  
as Collateral Agent

Date: 3-5-03

  
\_\_\_\_\_  
Signature of Assignor

John T. Grube Manager  
Printed Name and Title

## VOLUNTARY SURRENDER AGREEMENT

**THIS VOLUNTARY SURRENDER AGREEMENT** (the "Agreement") dated as of March 4, 2003, is by and between **DATAPLAY, INC.**, a Delaware corporation ("Borrower"), on the one hand and **SILICON VALLEY BANK** (the "Bank"), **GATX VENTURES, INC.** ("GATX"), (collectively, Bank and GATX are referred to as "Senior Lenders") and **SEQUEL ENTREPRENEURS' FUND II, L.P.**, in its capacity as Collateral Agent ("Sequel") on the other hand (collectively, Sequel and Senior lenders are referred to as "Lenders").

### **RECITALS**

A. Senior Lenders and Borrower are parties to an Equipment Loan and Security Agreement dated December 20, 2001, which together with all other documents, instruments and writings which related thereto or executed in connection therewith are collectively referred to as the "Loan Agreement," and pursuant to which Senior Lenders made loan to Borrower (the "Loan").

B. Borrower was and is indebted under certain Secured Notes to the persons and entities named on the Schedule of Purchasers ("Purchasers") attached to that certain Secured Note and Warrant Purchase Agreement dated as of May 10, 2002 by and among Borrower and the Purchasers (the "Purchase Agreement"). Pursuant to the Purchase Agreement, the Purchasers appointed Sequel as Collateral Agent.

C. Borrower acknowledges that Lenders claim a valid and perfected security interest in all or substantially all of the Borrower's assets, and proceeds thereof (the "Collateral"), including without limitation, (a) inventory; (b) all accounts and contract rights of the Borrower; (c) all interests of the Borrower arising in the goods, the sale or lease of which give rise to any accounts; (d) all chattel paper, documents and instruments relating to any such accounts; (e) all rights, title and interest to technologies ("Technology") including, but not limited to, all versions of any software, firmware, hardware, chip layout and design, manufacturing processes, methods and system (including, without limitation, computer applications), ideas, inventions, original works of authorship, developments, improvements, modifications, or enhancements, created, acquired and/or developed by or on behalf of Borrower including, without limitation, all object code and source code; all designs, drawings, specifications, models, data, algorithms, documentation, diagrams, flow charts and development plans, know-how and techniques, trade secrets and materials; all derivative works of the foregoing by whomever created (in object code, source code, or any other form and/or any media); and all tangible embodiments of the foregoing (in whatever form or media); said rights, title and interest including, but not limited to, all patent rights, copyrights, trademark rights, mask rights, trade secret rights and all other intellectual and industrial property rights anywhere in the world thereto; (f) all furniture, fixtures and equipment; and (g) proceeds of the foregoing.

D. Borrower is in default under the Loan Agreement and the Purchase Agreement. Lenders have declared a default and accelerated the Loan and the Secured Notes.

E. Borrower is currently a debtor in possession in connection with Case No. 02-26846 ABC (the "Bankruptcy Case"), pending in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court").

F. On February 12, 2003, the Bankruptcy Court granted Lenders' Motion for Stay Relief to Foreclose Collateral, lifting the automatic stay of 11 U.S.C. § 362(a) to permit Lenders to exercise their rights with respect to the Collateral under applicable non-bankruptcy law.

G. Lenders have requested Borrower to voluntarily surrender the Collateral to Lenders and Borrower has agreed to do so. Borrower desires to voluntarily surrender the Collateral to Lenders in order to minimize costs to Lenders in exercising their secured rights with respect to the Collateral.

#### AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and Lenders agree as follows:

1. **Voluntary Surrender.** Borrower hereby voluntarily surrenders possession of the Collateral to Lenders, including the tangible personal property located at Borrower's former offices located in Boulder, Colorado. Borrower further agrees to transfer directly to DPHI Acquisitions, Inc., which is purchasing the Collateral from Lenders, \$625,000, which is a portion of proceeds attributable to, or derived from, the liquidation of DataPlay Japan, Inc. and DataPlay Pte. Ltd. (the "Liquidation Proceeds"). DPHI Acquisitions, Inc. shall hold the Liquidation Proceeds in a separate account pending resolution of the Borrower's motion to dismiss filed with the Bankruptcy Court or any legal determination whether Lenders and/or Sequel have perfected security interests therein. If any court of competent jurisdiction finally determines that the Lenders and/or Sequel are not perfected in the Liquidation Proceeds, DPHI Acquisitions shall return the Liquidation Proceeds to the Borrower (or to the Chapter 7 Trustee if the case is converted or otherwise as any court directs). Such restrictions shall terminate, and any remaining Liquidation Proceeds shall be paid to DPHI Acquisitions, Inc., upon the earlier of (i) dismissal of the Borrower's bankruptcy petition or (ii) a judicial determination that Senior Lenders and/or Sequel have perfected security interests in the Liquidation Proceeds.

2. **Obligations Under Loan Agreement Not Relieved.** Borrower expressly acknowledges and agrees that execution and performance under this Voluntary Surrender Agreement does not and shall not relieve, satisfy, alter or otherwise affect the obligations of Borrower under the Loan Agreement, the Purchase Agreement or the Secured Notes. Specifically, Borrower acknowledges and agrees that delivery to and possession by

Lenders of the Collateral shall not constitute transfer in payment or satisfaction of the obligations owing under the Loan Agreement, the Purchase Agreement or the Secured Notes and all indebtedness owing thereunder remains outstanding and enforceable. However, Lenders do hereby release any claims they might have in any cash in the hands of DataPlay's professionals and consent to the payments made prior to this Agreement but after October 18, 2002 for Borrower's ordinary course of business expenses.

3. **Borrower's Acknowledgments, Representations and Warranties.** Borrower hereby acknowledges to Lenders, that: (a) Borrower is in default of the Loan Agreement, the Purchase Agreement and the Secured Notes; (b) to the best of Borrower's knowledge, information and belief, Senior Lenders have a first priority perfected security interest in the Collateral, subject only to 2001 and 2002 personal property taxes owing to Boulder County, Colorado; (c) to the best of Borrower's knowledge, information and belief, Borrower has no defenses to Lenders' exercise of their rights in connection with the Loan Agreement, the Purchase Agreement, and the Secured Notes and (d) the Loan Agreement, the Purchase Agreement and the Secured Notes are in full force and effect and remain enforceable in accordance with their terms.

4. **Subsequent Disposition of Collateral.** Borrower acknowledges and agrees that under the prevailing circumstances a sale in bulk of the Collateral by Lenders will likely maximize the value thereof and will generate maximum net value to be applied to Borrower's outstanding obligations under the Loan Agreement, the Purchase Agreement and the Secured Notes.

5. **Documentation to be Provided.** Borrower agrees to timely and fully cooperate with Lenders in all respects of the turnover and disposition of the Collateral, specifically including, but not limited to executing any reasonable additional documentation required to carry out the terms of this Agreement.

6. **Counterparts/Facsimile Signatures.** This Agreement may be executed in counterpart and by telefacsimile signatures.

7. **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

8. **Modification.** This Agreement may not be modified, amended or changed unless such modification, amendment or change is evidenced in writing by Lenders and Borrower.

9. **Severability.** If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such term, covenant, or condition and shall otherwise remain enforceable.

10. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, without giving effect to principles of conflict of laws.

11. **Construction.** In the event of any inconsistency, ambiguity or conflict between or among the provisions of this Agreement and the Loan Agreement, the terms of this Agreement shall prevail. In the event of any inconsistency, ambiguity or conflict between or among the provisions of this Agreement, the provision which best assures the payment and performance of the obligations of Borrower under the Loan Agreement or enlarges the interest of Lenders in and to the Collateral shall prevail. The terms of this Agreement shall be construed without regard to who drafted the various provisions hereof and shall be construed as though all parties hereto had participated equally in the drafting. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

12. **No Other Representations.** It is expressly understood by the Borrower that there have been no representations, express or implied, other than as set forth in this Agreement and any other document executed and delivered in connection herewith. This Agreement together with the other documents executed and delivered in connection herewith or pursuant hereto, contains the entire and complete understanding of the parties and supersedes all previous verbal and written agreements; there are no other agreements, representations, or warranties not set forth herein.

13. **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the permitted successors and assigns of the parties hereto.

14. **Time of Essence.** Borrower hereby acknowledges and agrees that time is strictly of the essence with respect to each and every term, condition, obligation and provision of this Agreement.

15. **Voluntary Execution.** By their signatures below, each party affirms that they have all requisite authority, corporate or otherwise, to enter into this Agreement and that they have read and fully understand this Agreement. The parties further affirm that they are entering into this Agreement voluntarily and have not been threatened, coerced, or intimidated or in any way pressured into signing this Agreement, they have had sufficient time to reflect upon the finality of this Agreement, and they have had sufficient opportunity to consult with legal counsel regarding this Agreement.

16. **Further Assurances.** Each party to this Agreement hereby agrees to execute and deliver such other and further documents as may be reasonably requested by the other party to more fully effectuate the terms, conditions and transactions contemplated by this Agreement.

DATED as of the date first above written.

SILICON VALLEY BANK

By: *Marla Johnson*  
Name: Marla Johnson  
Title: *Senior Vice President*

DATAPLAY, INC., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GATX VENTURES, INC., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SEQUEL ENTREPRENEURS FUND II, L.P.  
in its capacity as Collateral Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DPHI Acquisitions, Inc., as to section 1 concerning the Liquidation Proceeds

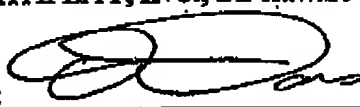
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

. DATED as of the date first above written.

SILICON VALLEY BANK

By: \_\_\_\_\_  
Name: Marla Johnson  
Title:

DATAPLAY, INC., a Delaware corporation

By:   
Name: DH OAVIET  
Title: DIRECTOR

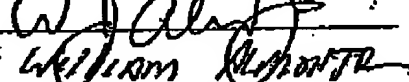
GATX VENTURES, INC., a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

SEQUEL ENTREPRENEURS FUND II, L.P.  
in its capacity as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

DPHI Acquisitions, Inc., as to section 1 concerning the Liquidation Proceeds

By:   
Name: William R. Smith  
Title: PRESIDENT



DATED as of the date first above written.

SILICON VALLEY BANK

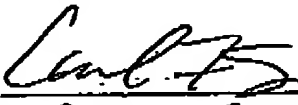
DATAPLAY, INC., a Delaware corporation

By: \_\_\_\_\_  
Name: Marla Johnson  
Title:

By: \_\_\_\_\_  
Name:  
Title:

GATX VENTURES, INC., a Delaware corporation

SEQUEL ENTREPRENEURS FUND II, L.P.  
in its capacity as Collateral Agent

By:   
Name: CARL F. SWANSON  
Title: VP

By: \_\_\_\_\_  
Name:  
Title:

DPHI Acquisitions, Inc., as to section 1 concerning the Liquidation Proceeds

By: \_\_\_\_\_  
Name:  
Title:

DATED as of the date first above written.

SILICON VALLEY BANK

By: \_\_\_\_\_  
Name: Marla Johnson  
Title:

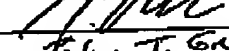
DATAPLAY, INC., a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

GATX VENTURES, INC., a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

SEQUEL ENTREPRENEURS FUND II, L.P.  
in its capacity as Collateral Agent

By:   
Name: John T. Greff  
Title: Manager

DPHI Acquisitions, Inc., as to section 1 concerning the Liquidation Proceeds

By: \_\_\_\_\_  
Name:  
Title: